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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 146

ORTON T. CAMPBELL, *Petitioner*

v.

JOHN J. DEVINY, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of the District Court is not reported (R. 234-235). The opinion of the Court of Appeals for the District of Columbia Circuit (R. 244-249) is reported at 194 F. 2d 876.

JURISDICTION

The judgment of the Court of Appeals was entered on January 24, 1952 (R. 250). On April 22, 1952, the Chief Justice extended the time within which to file a petition for certiorari to June 21,

1952 (R. 252). The petition for certiorari was filed on June 20, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court below correctly held that petitioner's discharge from the federal service followed the prescribed statutory procedure.

STATUTE INVOLVED

1. Section 14 of the Veterans' Preference Act of 1944 (58 Stat. 387, as amended, 61 Stat. 723, 5 U.S.C., Supp. IV, 863) provides the procedure to be followed in separating veterans [1] from the civil service:

> No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more

[1] Petitioner is a veteran and it has been assumed that he was therefore a "preference eligible employee within the meaning of Section 14 of the Veterans' Preference Act of 1944" (R. 20). As we point out below, however, there is serious doubt as to petitioner's eligibility for the benefits of the Act. See *infra*, p. .

than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: *Provided,* That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such cor-

rective action as the Commission finally recommends. * * *

2. Section 20 of the Act (58 Stat. 391, 5 U.S.C. 869) excludes the following positions from its coverage:

> Nothing contained in this Act is intended to apply to any position in or under the legislative or judicial branch of the Government or to any position or appointment which by the Congress is required to be confirmed by, or made with, the advice and consent of the United States Senate: *Provided, however,* That the provisions of this Act shall apply to appointments under Public Law Numbered 720, Seventy-fifth Congress, third session, approved June 25, 1938.

STATEMENT

This case arises out of petitioner's claim for reinstatement to the Government Printing Office job from which he was discharged for cause.

On April 29, 1949, the Public Printer notified petitioner that his removal from the rolls of the Government Printing Office was proposed because of "misconduct extending over a 2½-year period" (R. 7). The notice set forth ten charges of misconduct, including petitioner's defiance of specific orders and his false accusations of criminal conspiracy, perjury, fraud and corruption against his superiors (R. 7-8). In accordance with Section 14

of the Veterans' Preference Act, *supra*, p. 2, petitioner was advised of his right to answer the charges "personally and in writing" and of his right to furnish supporting affidavits (R. 9).

On receiving petitioner's reply to the charges, the Public Printer convened a Board of four officials of the Printing Office to consider the case and submit recommendations (R. 18). On May 23, 1949, the Board unanimously recommended that petitioner be dismissed (R. 18). The Public Printer, after reviewing the charges, petitioner's reply, the transcript of proceedings before the Board, and the Board's recommendation, determined that the charges were sustained (R. 18). Petitioner's services were accordingly terminated on June 3, 1949, and he was informed of his right to appeal to the Civil Service Commission under Section 14 of the Veterans' Preference Act, *supra*, p. 3. (R. 14-15).

Petitioner appealed and the case was fully investigated by the Commission (R. 15). Photostats and copies were obtained of pertinent documents in the Printing Office files (R. 18). In addition, affidavits were obtained from petitioner and more than twenty Printing Office officials and employees (R. 18-19). On completion of this investigation, the Commission held a hearing which was attended by petitioner and his counsel (R. 19). Petitioner testified in his own behalf and also offered the testimony of another witness (R. 19). The Printing

Office was represented at the hearing by its Chief Clerk (R. 19). After the conclusion of the hearing, a summary of the relevant facts developed during the hearing was prepared and submitted to the parties for their review and signature (R. 19). Petitioner and his counsel signed and returned the summary, noting minor typographical errors (R. 19). The Chief Clerk signed and returned his copy without notation (R. 19).

On the basis of all the foregoing information,[2] the Chief Law Officer of the Commission found that all ten of the charges were sustained, that petitioner's removal was for such cause as would promote the efficiency of the service, was not procedurally defective and did not violate any of his rights as a veteran (R. 20-21, 47).

Petitioner was advised of the decision and notified of his right to a further appeal (R. 16). He filed an appeal with the Commission's Board of Appeals and Review. The Board, after granting petitioner a hearing and considering the entire record, affirmed the decision of the Chief Law Officer sustaining the Printing Office's dismissal of petitioner (R. 16, 48). Thereafter, he took a still further appeal to Civil Service Commissioners, who, after careful consideration of the entire

[2] All of this material was incorporated into the Commission's appeal file which at all times has been available for inspection by the parties (R. 19).

file in his case, affirmed the decisions reached below (R. 49).

Petitioner then instituted this suit against respondents (the Public Printer and the Civil Service Commissioners) for restoration to the Printing Office job he held on June 3, 1949 (R. 1-4). The gravamen of his "Complaint for Enforcement of Veterans' Rights," filed March 30, 1950, was that his discharge violated the procedural requirements of Section 14 of the Veterans' Preference Act because the charges were not specific and in detail (R. 1-4).

Respondents moved for summary judgment, submitting supporting affidavits (R. 5). However, the District Court on July 31, 1950, granted petitioner's motion to refer the case to the Commissioner of Veterans' Cases and to defer consideration of respondents' motion until the Commissioner filed a report (R. 65-66). Petitioner also filed a cross-motion for summary judgment at that time (R. 66).

The Commmissioner filed a report recommending that both motions for summary judgment be denied (R. 126-127). After trial of the case, the District Court, finding that the procedure used in discharging petitioner did not comply with Section 14, ordered petitioner restored to duty in the Printing Office as of June 3, 1949, the date of his discharge (R. 232-234).

On appeal, the Court of Appeals reversed, hold-

ing that the statute had not been violated (R. 244-249). Judge Clark dissented. (R. 249).

ARGUMENT

Petitioner's main contention is that the court below erred in finding that he was informed of the reasons for his discharge "specifically and in detail", as required by Section 14 of the Veterans' Preferment Act, *supra,* p. 3. We submit that the finding was fully justified by the facts of this case. Moreover, even if incorrect, such a finding presents no novel issue of law calling for authoritative determination by this Court. In addition, it is at least doubtful whether petitioner, as an employee of the Government Printing Office, an agency generally regarded as within the legislative branch of the Government, is entitled to any of the benefits of the Veterans' Preference Act, which in terms is limited to positions in the executive branch.

1. Under Section 14, the notice of proposed discharge must set forth "any and all reasons [for the discharge] specifically and in detail." *Supra,* p. 3. Of the 10 charges set forth in the Public Printer's April 29, 1949, letter, petitioner concedes that four were sufficiently specific to meet the statutory test. (Pet. 14). A fifth charge, as pointed out by the court below, was also conceded to be sufficiently specific by petitioner's counsel, in his presence, at the hearing before the Civil Service Commissioners. (R. 244).

Examination of the remaining charges—1, 2, 3, 6 and 7—show that they, too, were sufficiently definite to apprise petitioner of the particular offenses charged so as to enable him to submit his defense. Charge 1, for example, alleged that petitioner, on April 12, 1949, distributed to other Printing Office employees copies of a certain printed brief, containing marginal notes which were written by him and which created discontent among the employees and disrespect for the Public Printer and other officials. There can be no doubt that this description—the reference to the date of the distribution of the material, the nature of the material distributed, the reference to the fact that it was petitioner's own handwriting notations which were offensive—informed petitioner with sufficient precision of the exact offense charged. Similarly, charges 2, 3, 6 and 7, as stated by the court below and found by the Civil Service Commission, "were sufficiently specific" (R. 245).

Petitioner also urges here, as he did below, that the statutory test of specificity applies to "any and all reasons" for the discharge and that therefore all of the ten charges here involved must meet that test. (Pet. 13-14). But this contention, even if sound, is immaterial here since the court below found that "all" ten charges "did meet that test" (R. 245).

The two cases relied on by petitioner in arguing that the charges here involved lacked definiteness

also do not support his view. The first case, *Stringer* v. *United States,* 117 C. Cls. 30, has no bearing here. It simply held that the statute guarantees to the employee a 30-day notice of any proposed discharge and that 29 days is therefore inadequate. In the instant case, petitioner received more than 30 days notice. He was notified of the proposed discharge on April 29, 1949 and his separation did not take effect until June 3, 1949. See *supra,* pp. 4-5.

Nor does the other case, *Deak* v. *Pace,* 185 F. 2d 997 (C.A.D.C.), aid petitioner. There, the court below, dealing with a question of specificity under Section 3 of the Act of December 17, 1942 (56 Stat. 1053), emphasized that "what may satisfy the statutory requirement for full information in the circumstances of one case may be wholly irrelevant to the circumstances of other cases." 185 F. 2d 997, 998. In the *Deak* case, the employees were charged with attending meetings of the Communist Party or affiliated organizations, without any specification as to time, place, or name of organization. In the instant case, on the other hand, petitioner was made fully aware of what was charged, each charge carrying a specific reference fully describing the date, place and nature of the incidents involved. These important distinctions in the factual backgrounds of both cases account for the different results reached and, at the same time, show that the cases are not inconsistent or in conflict, as petitioner asserts.

2. Petitioner's case rests on the assumption that he is entitled to the benefits of the Veterans' Preference Act of 1944, including the right to have his discharge from federal employ conform to the requirements of Section 14 of that Act. Although the point was not raised in the courts below by respondents, it should be noted that the express language of the Act denies its benefits to those employed "in or under the legislative or judicial branch" of the Government. Section 20, *supra*, p. 4. The quoted language was inserted in the Act by Congress to "make clear the act is intended to apply only to positions in or under the executive branch of the Government." S. Rep. 907, 78th Cong., 2d Sess. on H.R. 4115, p. 4. Regulations of the Civil Service Commission under the Act reiterate that Act's nonapplicability "to employees under the legislative or judicial branch of the Government." 5 C.F.R. 22.1(1).[3] The Government Printing Office is ordinarily regarded as within the legislative branch. See Act "Making Appropriations for the Legislative Branch," including the Government Printing Office, 65 Stat. 387, 401; United States Government Organization Manual (1951-1952), p. 37. It is at least very doubtful, therefore, whether petitioner is entitled to claim any benefits under the Act.

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[3] The Civil Service Commission and the Printing Office, however, have assumed that petitioner was entitled to the benefits of the Act. (R. 19-20). See fn. 1, *supra*, p. 2.

CONCLUSION

The decision of the court below reversing the District Court is clearly correct. There is no conflict of decisions and further review is not warranted. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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